



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. **77-939**

Larry A. Blizzard, Etc.,

Petitioner,

v.

Frank L. Mahan, Etc., et al.,

Respondents.

\*\*\*\*\*

ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

\*\*\*\*\*

PETITION FOR WRIT OF CERTIORARI

\*\*\*\*\*

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ON WRIT OF CERTIORARI  
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FOR THE FOURTH CIRCUIT

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The Petitioner, on behalf of himself and others similarly situated, respectfully petitions this Court for a writ of certiorari to review the judgment and opinion entered on August 11, 1977, in this proceeding by the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the Fourth Circuit, rendered on August 11, 1977, is not reported. It is reprinted as Appendix A to this Petition. (pp. 14-15, *infra*). Petitioner's petition for rehearing en banc was denied by the Court of Appeals on October 4, 1977. The memorandum opinion of the United States District Court for the Eastern District of North Carolina is unpublished. It is reprinted as Appendix B to this Petition. (pp. 16-23, *infra*).

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

I. Whether a state's affirmative obligation to assure a pro se prisoner's right of meaningful access to the courts is breached:

- A. When the state in effect requires that his legal papers be handwritten by prohibiting his use of a personal typewriter;
- B. When no reasonable alternative source of a typewriter is available; and
- C. When the state posits no countervailing interest of penological administration in support of its

ban on the use of personal typewriters?

II. Whether a prisoner's First Amendment rights extend to his use of instruments of correspondence as well as his right to correspond with others?

CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, of prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall



any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

#### STATEMENT OF THE CASE

This is a class action by a state prisoner seeking injunctive relief and damages under 42 U.S.C. §1983. Petitioner seeks relief from an order by

Respondents<sup>1</sup> forbidding access to his personal typewriter which was used to prepare pleadings and other papers to be filed in court, and for the purpose of carrying on personal correspondence.

Petitioner owns a personal typewriter. Prior to December 14, 1975, petitioner had possessed and used this typewriter while confined in the North Carolina Department of Correction Unit at Creswell. Effective that date, however, Respondent Mahan ordered that all typewriters possessed by inmates at the unit would have to be placed in storage or sent home at the owner's expense. Petitioner has been involved in various post conviction proceedings and prison condition litigation on his own behalf and for the assistance of others, and he anticipates that he will continue prosecuting these lawsuits during the remainder of the term of his confinement.

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<sup>1</sup> Respondent Frank L. Mahan is superintendent of the Creswell Unit of the North Carolina Division of Prisons, Respondent David L. Jones is secretary of the North Carolina Department of Correction and Respondent Ralph Edwards is Director of the Division of Prisons of the North Carolina Department of Correction.

Petitioner maintains personal correspondence with a number of other people through the mails, and he desires to continue this correspondence. For both his legal work and his letter writing, petitioner found the typewriter to be of great benefit.

Both petitioner and respondents filed motions for summary judgment. The Court denied petitioner's motion, allowed respondents' motion and ordered the action dismissed. The Court of Appeals for the Fourth Circuit affirmed per curiam the action of the District Court.

#### REASONS FOR GRANTING THE WRIT

This case presents another chapter in the continuing conflict between prisoners' rights and the independent discretion of penal officials. Does the state wrongfully interfere with the preparation of legal papers when it prohibits the use of personal typewriters where there is not meaningful access to other typewriters? Is it consistent with the state's duty to assure access to the courts, when the state prohibits the use of typewriters, but is required to provide paper and pen to indigent prisoners? To what extent has Bounds v. Smith expanded the duty imposed on the state to assure meaningful access to the courts?

These are questions of obvious national importance, fully warranting review and resolution by this Court. The considerations that justify the grant of certiorari in this case may be stated more particularly as follows:

#### I. THIS PROHIBITION ON THE USE OF PERSONAL TYPEWRITERS BY PRO SE PRISONERS PRESENTS AN IMPORTANT QUESTION IN THE CONFLICT BETWEEN PRISONERS' RIGHTS AND PENAL ADMINISTRATION.

Petitioner submits that access to a typewriter makes the courts more accessible. While handwritten pleadings by prisoners are permitted to be filed, these documents are usually of poor quality and are often illegible. The scrawled, smudged, and indistinct handwritten papers submitted by pro se prisoners simply cannot be digested and understood to the same extent as typed communications.

This presents the question of whether the requirement of meaningful access to the courts is met when legal papers of pro se prisoners suffer this "badge of inferiority" by being handwritten. This prison regulation arbitrarily obstructs pro se prisoners' access to the courts, since the state has posited no countervailing considerations for this restriction. The state's position is simply that the right

to use a typewriter does not have constitutional protection. This court has stood firm on the proposition that the fundamental right of access to the courts should not be obstructed.

In Johnson v. Avery, 393 U.S. 483 (1969), this court struck down prison regulations prohibiting inmates from helping other inmates prepare writs and other legal papers. This Court said, "[I]t is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." 393 U.S. at 485. [emphasis added].

In Procunier v. Martinez, 416 U.S. 396 (1974), this Court invalidated a ban on the use of law students or paraprofessionals to conduct attorney-client interviews with prisoners. Again this Court enforced the principle that "Regulations and practices that unjustifiably obstruct . . . aspects of the right of access to the courts are invalid." 416 U.S. at 419. [emphasis added].

The recent prison libraries case, Bounds v. Smith, 430 U.S. 817 (1977), furthers the right of access to the courts. In Bounds v. Smith this Court held "that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law

libraries or adequate assistance from persons trained in the law." 430 U.S. at 828. Noting that the Constitution requires "remedial measures to insure that inmate access to the courts is adequate, effective and meaningful", 430 U.S. at 822, the Court determined that the unavailability of legal reference materials to prisoners was an invalid impediment upon their right to litigate.

Petitioner submits that the Court should decide whether the regulation in question is an invalid impediment upon the prisoners' right to litigate. If a prisoner is limited in the preparation of his writs to lead pencil and scratch paper, he is not altogether barred from the courts. Yet by being denied the use of his typewriter, the prisoner is singled out from all other litigants by the marked inferiority of his pleadings and is inevitably deprived of at least some degree of judicial attention, appreciation, and understanding from even the most conscientious court.

II. IN VIEW OF THE RECENT CASE OF BOUNDS V. SMITH, THERE IS UNCERTAINTY AS TO THE SCOPE OF THE STATE'S AFFIRMATIVE OBLIGATION TO ASSURE INDIGENT PRISONERS' RIGHT OF MEANINGFUL



## ACCESS TO THE COURTS.

In Bounds v. Smith, supra, the Court said, "[O]ur decisions have consistently required states to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them." 430 U.S. at 824-825. [emphasis added].

This presents the question of whether this affirmative obligation is breached when the state prohibits the use of personal typewriters but does not provide a reasonable alternative. Petitioner submits that this is an important question for this Court not only for the facts involved, but also to make clear to prison officials the extent of their affirmative obligation to assure pro se prisoners meaningful access to the courts.

A common aspect of each of the prisoners' rights cases, Johnson v. Avery, supra; Procunier v. Martinez, supra, and Bounds v. Smith, supra, is that the facility or resource in question was not a necessary prerequisite to a prisoner's participation in litigation, but that his ability as a litigant was materially advanced thereby. The same is true in this case. Typewritten pleadings are not

mandated by court rule, but they are clearly a practical necessity for the adequate presentation of a case in court.

As crucial as the right of judicial access is, each aspect of this right must be balanced against any legitimate countervailing interest of penal administration. In Johnson v. Avery, supra, the state was concerned with a possible menace to prison discipline; while in Procunier v. Martinez, supra, threats to prison security and the burden of screening and monitoring visitors were cited; and in Bounds v. Smith, supra, the interest of economy was advanced. In each case these state interests were found of insufficient magnitude to override the prisoners' rights. In the present case, there is no need for such a balancing process, since the state does not rely upon any interest of penal administration which are inconsistent with the prisoner's use of his own typewriter. In fact, prior to December 14, 1975, when this right was arbitrarily withdrawn, petitioner and other prisoners at his unit had used their personal typewriters for a long period of time without any adverse consequences.

Additionally, the state submitted a plan in Bounds v. Smith, supra, which



was approved by the District Court, which included a proposal "to train inmates as research assistants and typists to aid fellow prisoners." 430 U.S. at 819. In effect the State of North Carolina, on record, is in agreement that typewritten pleadings and papers enhance a prisoner's presentation of a case in court, but would by the regulation in question arbitrarily prohibit the use of personal typewriters.

III. A TYPEWRITER IS AN INSTRUMENT OF PERSONAL CORRESPONDENCE AND IS PROTECTED UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

A typewriter in addition to being a tool for the preparation of legal papers, is an instrument of personal correspondence by prisoners with fellow prisoners and outsiders through the mails. Petitioner submits that a First Amendment protection of a prisoner's right to use his typewriter is present in this case.

"[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objections of the correctional system." Pell v. Procunier, 417 U.S. 817, 822 (1974).

Petitioner respectfully requests that this Court decide to what extent First Amendment rights extend to tools and

devices used in correspondence.

### CONCLUSION

For all of the foregoing reasons, a writ of certiorari should issue to review the judgment of the Fourth Circuit in this proceeding.

Respectfully submitted,

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\*The prosecution of this action is sponsored by the North Carolina Civil Liberties Union Legal Foundation, Inc.

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APPENDIX A

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 76-2233

Larry A. Blizzard, etc.,

Appellant,

-versus-

Frank L. Mahan, etc.,

David L. Jones, etc.,

Ralph Edwards, etc.,

Appellees.

---

Appeal from the United States District  
Court for the Eastern District of North  
Carolina, at Raleigh. John D. Larkins,  
Jr., District Judge.

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Submitted: May 19, 1977.

Decided: August 11, 1977

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Before RUSSELL, Circuit Judge, FIELD,  
Senior Circuit Judge, and WIDENER,  
Circuit Judge.

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Norman B. Smith (Smith, Patterson, Follin,  
Curtis and James) for Appellant; Jacob L.  
Safron, Special Deputy Attorney General,  
for Appellees.

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PER CURIAM:

A review of the record and of the  
district court's opinion discloses that  
this appeal from the order of the district  
court denying relief under 42 U.S.C. §1983  
is without merit. Accordingly, the order  
is affirmed for the reasons stated by the  
district court. Blizzard v. Mahan, C/A No.  
76-0117-CRT (E.D.N.C., Sept. 13, 1976).

AFFIRMED.

## APPENDIX B

IN THE UNITED STATES DISTRICT COURT  
for the  
EASTERN DISTRICT OF NORTH CAROLINA  
Raleigh Division

No. 76-0117-CRT

LARRY A. BLIZZARD, on )  
behalf of himself and all )  
other persons similarly )  
situated, )

Plaintiff, )

v. )

FRANK L. MAHAN, Superin- )  
tendent of Creswell Unit )  
of North Carolina )  
Division of Prisons; )  
DAVID L. JONES, Secretary )  
of the North Carolina )  
Department of Correction; )  
and RALPH EDWARDS, )  
Director of the Division )  
of Prisons of the North )  
Carolina Department of )  
Correction, )

Defendants. )

LARKINS, Chief Judge:

The plaintiff, for himself and on behalf  
of others similarly situated, comes before

this Court seeking injunctive and monetary relief under Title 42, United States Code Section 1983. The plaintiff is presently confined in the Creswell Unit of the North Carolina Division of Prisons. He complains of a regulation invoked on December 14, 1975, by officials employed by the North Carolina Department of Corrections, defendants named herein, requiring the plaintiff-prisoner to dispose of a typewriter owned by the plaintiff and used by him at the Creswell Unit. The complaint prays for money damages totaling \$12,000.00 from the defendants. Concomitant with the claim for damages, the prisoner requests a permanent injunction to enjoin the defendant officials from enforcing the prison regulations which prevent the plaintiff and members of the alleged class from reasonable possession, access, and use of typewriters owned by the individual prisoners.

It should be noted carefully at the outset of this opinion that the typewriter in question was owned by the plaintiff individually; he apparently kept the typewriter in his living quarters at the Unit. With the assistance of his typewriter, the plaintiff has authored various post-conviction petitions and spawned other litigation. He, also, has enjoyed the use of the typewriter in handling his personal affairs. The December 14, 1975, regulation ordered all typewriters owned by inmates at the Creswell Unit to either be



stored at the Unit or be delivered to the prisoner's residence, outside of the prison, at the owner's expense. The plaintiff elected the latter option. As a result of this order, the plaintiff does not have access to a typewriter, whether owned by the plaintiff, owned by another inmate, or provided by the Department of Corrections.

The plaintiff bottoms his complaint on several premises. First, he contends that the denial of the use and possession of a privately owned typewriter, while incarcerated, impairs his right of access to state and federal courts. He believes that petitions and pleadings drafted by prisoners in handwritten form carry a badge of inferiority. The plaintiff notes in his brief that typed petitions and pleadings from prisoners are not mandated by the Rules of Court of the United States District Court for the Eastern District of North Carolina; however, he argues that typewritten petitions are a "practical necessity". Second, the plaintiff proffers the argument that the denial of access to his typewriter infringes his right to communicate by the mails with respect to his business and personal affairs. The plaintiff argues that these "rights" stem from the guarantees of the First and Fourteenth Amendments to the United States Constitution; that the defendants have violated and usurped these "rights" under color of law; that

42 U.S.C. sec. 1983 provides a device for redress of this alleged infringement. This Court appreciates the ingenuity and novelty of the plaintiff's arguments, but flatly rejects these contentions.

The Fourth Circuit Court of Appeals has not rendered a decision on all fours when compared to the case at bar; that is, a claim involving alleged "typewriter deprivation" under 42 U.S.C. sec. 1983. The Fifth Circuit has been faced with several cases involving prison regulations and removal of prisoner access to typewriters. In each instance, the Fifth Circuit has upheld the prison officials' action in blocking or impeding prisoners' access to typewriters. For example, in WILLIAMS V. UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, 433 F.2d 958, 959 (5 Cir. 1970), the court held the following:

Appellant, bringing this action on behalf of himself and all other prisoners similarly situated, claims that the prison prohibition against the inmate use of typewriters in the drafting of their pro se petitions is a denial of free access to the courts. We find no merit in this contention having specifically rejected it in DURHAM V. BLACKWELL, 409 F.2d 838 (5 Cir. 1969).

In a similar Fifth Circuit case, STUBBLEFIELD V. HENDERSON, 475 F.2d 26 (5 Cir. 1973), the opinion states:

It is well established that an inmate has no federally protected right to the use of typewriters to prepare legal writs.

Other Fifth Circuit cases have adopted a similar stance: EISENHARDT V. BRITTON, 478 F.2d 855 (5 Cir. 1973) (upheld misconduct report charging a prisoner with unlawful use of a prison typewriter to type a court petition); SPROUSE V. MOORE, 476 F.2d 989 (5 Cir. 1973); TARLTON V. HENDERSON, 467 F.2d 200 (5 Cir. 1972); DURHAM V. BLACKWELL, 409 F.2d 839 (5 Cir. 1969) (upheld prohibition against the purchase of a typewriter by a prisoner); Annot., 23 A.L.R.Fed. 108 (1975).

The plaintiff relies on a trio of recent United States Supreme Court decisions to sustain his position that the North Carolina prison administrators can not constitutionally deny a prisoner access to his typewriter. The plaintiff cites JOHNSON V. AVERY, 393 U.S. 483, 21 L.ed.2d 718, 89 S.Ct. 747 (1969), YOUNGER V. GILMORE, 404 U.S. 15, 30 L.ed.2d 142, 92 S.Ct. 250 (1971), affirming 319 F.Supp. 105 (N.D. Cal. 1970), and PROCUNIER V. MARTINEZ, 416 U.S. 396, 40 L.ed.2d 224, 94 S.Ct. 1800 (1974) as authority for his position. These cases lucidly evidence a trend in the Supreme

Court to protect the inmates' right to petition for post-conviction redress; however, these decisions should not be extended to embrace the plaintiff's position. In JOHNSON V. AVERY, supra., the Court reversed a disciplinary penalty placed on a prisoner for violating a prison administrative regulation which prohibited inmates from assisting their confined peers in the preparation of writs and other legal documents. In PROCUNIER V. MARTINEZ, supra., the Court invalidated a regulation which prevented law students and paralegals from conducting attorney-client interviews with prisoners. Finally, an effort by the State of California to reduce the size of its prison law libraries was held constitutionally impermissible in YOUNGER V. GILMORE, supra. In each case where the prisoners' right of access was maintained, the Supreme Court did not employ language broad enough to embrace the situation at hand. Also, the JOHNSON, PROCUNIER, and GILMORE decisions do not demonstrate a social policy consideration so potent as to support and further the plaintiff's contentions. The ease in which this trio of decisions can be distinguished factually from this complaint founded solely on the prisoner's loss of the use of his typewriter underscores the weakness in the plaintiff's claim. In no case cited by the plaintiff has a federal court ever held that the

deprivation of a prisoner's access to his typewriter by a prison regulation alone, without attending facts, could serve as the basis for a Section 1983 claim. Since the United States Constitution, statutes, court rules, and case law do not secure a prisoner's right to access to the courts via the ownership and use of a typewriter, this civil action for redress under 42 U.S.C. sec. 1983 is not viable.

Before disposing of this case, the procedural posture of this action should be noted. The plaintiff has submitted a summary judgment motion in accordance with Rule 56, Fed.R.Civ.Pro.; the defendant has proffered a motion to dismiss based on Fed.R.Civ.Pro. 12(b)(6). Since all parties have filed written memorandums with this Court and have a reasonable opportunity to present all materials pertinent to a motion by Rule 56, the Court shall treat the defendant's motion to dismiss as a motion for summary judgment for the disposition of this action. BRADFORD V. SCHOOL DISTRICT NO. 20, 364 F.2d 185 (4 Cir. 1966).

The plaintiff has failed to establish a constitutional right which has been impaired by the defendants; a prisoner's loss of the use of this typewriter has not yet attained constitutional magnitude.

NOW, THEREFORE, in accordance with the foregoing, it is

ORDERED that the plaintiff's motion for summary judgment pursuant to Rule 56, Fed.R.Civ. Pro. is hereby DENIED,

FURTHER ORDERED that the defendant's motion for summary judgment pursuant to Rule 56, Fed.R.Civ.Pro., be, and the same is hereby ALLOWED, and that this case be, and the same is hereby DISMISSED, and

FURTHER ORDERED that the Clerk shall serve copies of this ORDER upon all counsel of record.

Let this ORDER be entered forthwith.

/s/ John D. Larkins, Jr.

JOHN D. LARKINS, JR.

CHIEF JUDGE

At Trenton, North Carolina

September 10, 1976



MAR 11 1978

MICHAEL RUDAK, JR., CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1977

**No. 77-939**

LARRY A. BLIZZARD, ET AL.,

*Petitioner,*

v.

FRANK L. MAHAN, ET AL.,

*Respondents.*

BRIEF OF RESPONDENTS  
IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1977

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**No. 77-939**

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LARRY A. BLIZZARD, *ET AL.*,

*Petitioner.*

v.

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BRIEF OF RESPONDENTS  
IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**OPINIONS BELOW**

In a Memorandum Decision filed August 11, 1977, a panel of the United States Court of Appeals for the Fourth Circuit affirmed the Order of the United States District Court for the Eastern District of North Carolina dismissing the Petitioner's Complaint filed pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983. *Blizzard v. Mahan*, No. 76-2233, mem. dec. (4th Cir., August 11, 1977). *Blizzard* then filed a Petition for Rehearing and Suggestion for Rehearing En Banc which was denied October 4, 1977, no Judge having requested a poll on the Suggestion for Rehearing En Banc. A copy of the Memorandum Decision of the United States Court of Appeals for the Fourth

Circuit (A. pp. 14, 15), and the Order of the United States District Court for the Eastern District of North Carolina (A. pp. 16-23), are appended to Blizzard's Petition. From the judgment below, Blizzard has filed this Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

### **JURISDICTION**

The jurisdiction of this Court has been invoked pursuant to 28 U.S.C. §1254(1).

### **QUESTION PRESENTED**

Whether A Prisoner Has A Constitutional Right To Possess His Personally Owned Typewriter?

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**Constitution of the United States:**

#### **AMENDMENT I.**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

### **AMENDMENT XIV.**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

**United States Code:**

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

### **STATEMENT OF THE CASE**

Petitioner, an inmate in the custody of the North Carolina Department of Correction, brought this action under 42 U.S.C. §1983, seeking injunctive relief and monetary damages. He sued Frank L. Mahan, Superintendent of the prison unit where he was housed; Ralph Edwards, Director of the Division of Prisons of the North Carolina Department of Correction; and David L. Jones, then Secretary of the North Carolina Department of Correction. In his Complaint he alleged that until December 14,

1975, he was permitted to possess his personally owned typewriter which he used in preparing court petitions for himself and other prisoners, and in personal correspondence. On December 14 according to his Complaint, Defendant Mahan enforced the regulations of the Department and ordered that all typewriters in the possession of inmates be either placed in storage or sent home. Petitioner filed a Motion for Summary Judgment with the District Court and Defendants moved to dismiss Petitioner's Complaint. The District Court treated Defendants' Motion as one for Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure and dismissed the Complaint. The Court of Appeals for the Fourth Circuit affirmed *per curiam* the Order of the District Court.

### ARGUMENT

#### A PRISONER HAS NO CONSTITUTIONAL RIGHT TO POSSESS HIS PERSONALLY OWNED TYPEWRITER.

That neither a state nor a federal prisoner has a constitutional right to possess a typewriter, whether personally owned or otherwise, has been held by every federal court which has considered the question. *Eisenhardt v. Britton*, 478 F.2d 855 (5th Cir. 1973); *Sprouse v. Moore*, 476 F.2d 995 (5th Cir. 1973); *Stubblefield v. Henderson*, 475 F.2d 26 (5th Cir. 1973); *Tarleton v. Henderson*, 467 F.2d 200 (5th Cir. 1972); *Williams v. United States Department of Justice*, 433 F.2d 958 (5th Cir. 1970); *Durham v. Blackwell*, 409 F.2d 838 (5th Cir. 1969); *Bijeol v. Benson*, 404 F.Supp. 595 (S.D. Ind. 1975), *remanded for consideration on other grounds*, 556 F.2d 584 (6th Cir. 1977); *Laaman v. Hancock*, 351 F.Supp. 1265, 1271 (D. N.H. 1972); *McDonnell v. Wolff*, 342 F.Supp. 616, 618-19 (D. Neb. 1972), *modified* 483 F.2d 1059 (8th Cir. 1973), *aff'd in part, reversed in part sub nom. Wolff v. McDonnell*, 418 U.S. 539 (1974).

The unanimity of these lower federal court decisions is a compelling demonstration that typewriters are not required for inmates to have meaningful access to the courts. It is these courts which have daily contact with prisoner petitions and which are in the best position to determine whether typewritten prisoner complaints are so far superior to handwritten ones as to necessitate a constitutional right that typewriters be made available to prisoners for use in petitioning the courts. As the United States Court of Appeals for the Fifth Circuit noted in *Eisenhardt v. Britton*, *supra* at 201, "the availability of a typewriter is not necessary for judicial review."

Because he cannot cite any case law supporting his proposition, Petitioner attempts to show that certain decisions of this Court mandate by implication that prison administrators must permit prisoners to possess and use their personally owned typewriters in preparing court petitions. He cites as authority for this argument *Johnson v. Avery*, 393 U.S. 483 (1969), *Procunier v. Martinez*, 416 U.S. 396 (1974), and *Bounds v. Smith*, 430 U.S. 817 (1977).

It is correct that this Court held in *Bounds* that the State must provide law libraries or some alternative in order that inmates may have meaningful access to the courts. But as Mr. Justice Rehnquist noted in *Ross v. Moffitt*, 417 U.S. 600, 611-12 (1974), constitutional rights do tend "to declare themselves absolute to their logical extremes." Petitioner's argument carries the right of access to the courts beyond the "limits" and to the point of the absurd.

Respondents readily acknowledge that "[a] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner. . . ." *Pell v. Procunier*, 417 U.S. 817, 822 (1974). However, in *Pell* this Court nonetheless recognized "the familiar proposition that '[l]awful incarceration brings about the necessary withdrawal or limitations of privileges and



rights, a retraction justified by the considerations underlying our penal system.” As associational rights protected by the First Amendment are among the most obvious to be curtailed by the fact of incarceration, *Jones v. North Carolina Prisoners' Labor Union*, \_\_\_\_\_ U.S. \_\_\_\_\_, 53 L.Ed. 2d 629, 638, 97 S.Ct. 2532, 2538 (1977), the right to possess personal property is likewise severely limited when one is confined in a prison. Petitioner's conviction itself has “sufficiently extinguished” his interest in maintaining personal possession of his typewriter. *Cf. Meachum v. Fano*, 427 U.S. 215, 224 (1976).

The Petitioner finds the right to possess his personal typewriter falls under the curtilage of the First Amendment in that use of the typewriter is necessary to facilitate his access to the courts. Petitioner's position is neither supported by case law, as noted above, nor by logic.

The District Court stated in the case at bar that the *Rules of Court of the United States District Court for the Eastern District of North Carolina* do not require that petitions and pleadings from prisoners be typed. Petitioner maintains though that handwritten pleadings bear a “badge of inferiority.” Petitioner does not explain why a typewritten complaint in which the rules of capitalization, punctuation, sentence structure and grammar are egregiously violated bears any less of a “badge of inferiority” than a similarly handwritten petition. It might as well be argued that a complaint in one's own handwriting is superior because it bears a “hallmark of sincerity.”

However, the Fifth Circuit in *Tarleton v. Henderson*, *supra* at 201, finds specifically that “a litigant's cause is not prejudiced by the filing of a handwritten brief.” In fact many federal courts are now providing forms on which the inmate petitioner simply

fills in the blanks. There is no requirement that the responses be typed.<sup>1</sup>

In his Petition for Writ of Certiorari, Petitioner at page 10 quotes the following language in *Bounds v. Smith*:

Our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the court. It is indisputable that indigent inmates must be provided at State expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them. 430 U.S. at 824-825.

Petitioner apparently interprets this quotation to mean that *Bounds* requires States to provide an inmate with any tool which makes his access to the court more convenient. The court of course in *Bounds* held no such thing. The issue before the Court in that case was stated by Mr. Justice Marshall as being “[w]hether States must protect the rights of prisoners to access

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<sup>1</sup>See, e.g., *MODEL FORM FOR USE IN APPLICATION FOR HABEAS CORPUS UNDER 28 U.S.C. §2254* following Rules governing Section 2254 cases.

See also *RECOMMENDED PROCEDURES FOR HANDLING PRISONER CIVIL RIGHTS CASES IN FEDERAL COURT* (F.J.C.—R-77-5) Federal Judicial Center. This report, prepared under the direction of Judge Ruggero J. Aldisert, recommends various forms for use under 42 U.S.C. §1983. These forms are being adopted by Local Rule of many District Courts; e.g., the Federal District Court for the Eastern District of North Carolina expressly authorizes and requires the use of these forms. (Rule 20, Rules of Court of the United States District Court for the Eastern District of North Carolina.) These forms expressly notify the prisoner that they may be handwritten.

to the courts by providing them with law libraries or alternative sources of legal knowledge." 430 U.S. at 817. The court's answer to this question was that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing inmates with adequate law libraries or adequate assistance from persons trained in the law."

Petitioner asserts that as a part of the State's affirmative obligation to assure access to the courts, the State must provide "a reasonable alternative if the State denies inmates use of their personal typewriters." Petition for Writ of Certiorari, p. 10. Quite obviously under *Bounds* the State must provide an indigent inmate with necessary writing implements and paper for his court petitions. This the Department of Correction has been doing even before *Bounds*. The Department's regulation on this subject is codified at 5 North Carolina Administrative Code 2G.0202 as follows:

Inmates will be provided with paper and writing implements to petition the courts for review of their cases or to file complaints concerning any matter. Carbon paper will be provided so that the inmate may make two copies of his petition or complaint. One copy will be mailed directly to the court with the original. The inmate will be allowed to keep the second copy for his personal use.

Indigent inmates are allowed up to fifteen letters per month postage free, but there is no limitation on free postage for mail to attorneys, courts, and State and federal officials. 5 North Carolina Administrative Code 1C.1102(c)(3). Thus, even before *Bounds* the Department of Correction had "shoulder[ed] affirmative obligations to assure all prisoners meaningful access to the courts."

Petitioner seems to argue that anything which would materially advance an inmate's access to the Court is constitutionally required. But as Chief Justice Burger pointed out in his concurring opinion in *Jones v. North Carolina Prisoners' Labor Union supra*, 53 L.Ed. 2d at 646, 97 S.Ct. at 2544, everything that is desirable is by no means mandated by the Constitution. In terms of access to the Court, an inmate's desire to use his personal typewriter in preparing court petitions simply cannot be equated with the need for law libraries or other form of legal assistance.

In compliance with the District Court's Order in *Bounds*, the Department of Correction, taking into consideration its peculiar needs, drafted a comprehensive plan that it considered best for providing legal assistance to inmates. This plan went beyond simply providing law libraries—it provided for trained inmate legal assistants, forms, stenographic assistance, and copying facilities. Petitioner makes much ado about the fact that the State provided for typewriters in its proposal. Again, however, Petitioner merely confuses that which is desirable with that which is constitutionally required.

Petitioner also asserts that the District Court failed to balance the inmate's need for his personal typewriter against the State's interest in prohibiting his possession of it while in prison. Where a petitioner can assert no constitutional right, the Court may dismiss his petition without requiring any further showing from the State. However, it is obvious that possession of typewriters by inmates can create serious management problems. As there are in excess of fourteen thousand inmates in the North Carolina prison system, under Petitioner's logic each of these inmates would have a right to his personal typewriter. The storage problem alone would be monstrous. And this fact is true even though only a small percentage of inmates might desire their personal typewriters. Moreover, typewriters would create a noise

problem. An inmate with a typewriter would disturb other inmates. (For the same reason, the Department bans the playing of radios without earphones.) Furthermore, the presence of a typewriter in a cell block would create a danger to security. First, there is a real possibility that the typewriter would be stolen from its owner. Second, the typewriter would be a most convenient hiding place for contraband such as heroin. Finally, parts of a typewriter can be fashioned into weapons. The facility of inmates to fabricate weapons from the most apparently innocuous objects is a fact well known to persons familiar with the daily routine of prison life. Obviously, the whole typewriter itself could be used as a most deadly weapon, given its weight and the materials with which it is constructed.

These reasons alone are sufficient to support the State's position in prohibiting possession of personal typewriters. In order to meet his burden of proof, Petitioner would have to show that these grounds are totally unreasonable and have no basis in fact. *See Jones v. North Carolina Prisoners' Labor Union, supra*, 53 L.Ed. 2d at 640, 97 S.Ct. at 2539. This, of course, Petitioner cannot do.

Finally Petitioner claims a First Amendment right to the possession of his typewriter merely because the typewriter is a means of communication. Under this logic, he might as well claim the right to a personal telephone. However, in any event, this Court has recognized that alternative resources may suffice when the State must limit some protected interest of a prisoner. *Procunier v. Martinez, supra*, 417 U.S. at 824. We have noted above that writing implements, paper and postage is available to inmates in the North Carolina prison system. There is no limitation on the number of letters an inmate may write and only a few highly limited restrictions concerning whom an inmate may write. Inmates also have liberal visitation privileges and access to telephones. They also have contact with outside organizations

(*See Jones v. North Carolina Prisoners' Labor Union, supra*.) A prisoner in the North Carolina prison system is quite clearly not held incommunicado by virtue of the fact that he is not allowed to have his personal typewriter. Alternative means of communication are fully available to this Petitioner and to other inmates in North Carolina.

### CONCLUSION

For the foregoing reasons Respondents contend that Petitioner has no constitutionally protected interest in maintaining possession of his personal typewriter and, therefore, that the Petition for Writ of Certiorari should be denied.

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